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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BENITO**

KATRINA TRESTER and ABIGAIL PEREZ-
TELLEZ, individually, and on behalf of
aggrieved employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiffs,

v.

DELICATO VINEYARDS, a California
corporation; and DOES 1 through 100,
inclusive;

Defendants.

Case No.:

CU-22-00016

**COMPLAINT FOR CIVIL PENALTIES
FOR VIOLATION OF LABOR CODE §
2698 *et seq.* (PRIVATE ATTORNEYS
GENERAL ACT OF 2004)**

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BENITO

JAN 26 2022
Leesa M. Rivera

BY _____
DEPUTY CLERK

FILED BY FACSIMILE

1 Plaintiff Katrina Trester and Plaintiff Abigail Perez-Tellez (collectively, “Plaintiffs”)
2 hereby submit their Complaint against Defendants Delicato Vineyards; and DOES 1 through 100,
3 inclusive; (collectively, “Defendants”), on behalf of themselves and other current and former
4 aggrieved employees of Defendants for penalties as follows:

5 **INTRODUCTION**

6 1. This representative action is brought pursuant to Labor Code § 2698 *et seq.*
7 (the Private Attorneys General Act of 2004 (“PAGA”)) for Defendants’ violations of Labor Code
8 §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194,
9 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

10 2. This Complaint challenges Defendants’ systemic illegal employment
11 practices resulting in violations of the stated provisions of the Labor Code against the identified
12 group of employees.

13 3. Plaintiffs are informed and believe and thereon allege Defendants jointly
14 and severally acted intentionally and with deliberate indifference and conscious disregard to the
15 rights of all employees in (1) failing to pay all meal period wages and rest break wages, (2) failing
16 to properly calculate and pay all minimum and overtime wages, (3) failing to provide accurate
17 wage statements, (4) failing to pay all wages due and owing during employment and upon
18 termination of employment, (5) failing to provide paid sick leave, and (6) failing to reimburse all
19 necessary business expenses.

20 **JURISDICTION AND VENUE**

21 4. This action is brought pursuant to PAGA. The civil penalties sought by
22 Plaintiffs exceed the minimal jurisdiction limits of the Superior Court and will be established
23 according to proof at trial.

24 5. This Court has jurisdiction over this action pursuant to California
25 Constitution, Article VI, Section 10, which grants the Superior Court original jurisdiction in all
26 causes except those given by statute to other courts. The statutes under which this action is
27 brought do not specify any other basis for jurisdiction.
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1 **13.** At all times herein mentioned, Defendants, and each of them, were agents,
2 partners, joint venturers, representatives, servants, employees, successors-in-interest, co-
3 conspirators and assigns, each of the other, and at all times relevant hereto were acting within the
4 course and scope of their authority as such agents, partners, joint venturers, representatives,
5 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions
6 alleged herein were duly committed with ratification, knowledge, permission, encouragement,
7 authorization and consent of each Defendant designated herein.

8 **14.** As such, and based upon all the facts and circumstances incident to
9 Defendants' business in California, Defendants are subject to PAGA and Labor Code §§ 201,
10 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197,
11 1197.1, 1198, 2800 and 2802.

12 **CAUSE OF ACTION**

13 **VIOLATION OF PAGA**

14 **(AGAINST ALL DEFENDANTS BY PLAINTIFFS)**

15 **15.** Plaintiffs re-allege and incorporate by reference paragraphs 1 through 14
16 as though fully set forth herein.

17 **16.** PAGA expressly establishes that any provision of the California Labor
18 Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its
19 departments, divisions, commissions, boards, agencies or employees for a violation of the
20 California Labor Code, may be recovered through a civil action brought by an aggrieved
21 employee on behalf of himself or herself, and other current or former employees.

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1 **17.** On August 30, 2021, Plaintiff Katrina Trester provided written notice to
2 the LWDA and Defendants of the specific provisions of the Labor Code she contends were
3 violated, and the theories supporting her contentions. She believes that on or about November 3,
4 2021, the sixty-five (65) days' notice period expired, and the LWDA did not take any action to
5 investigate or prosecute this matter. Attached hereto as **Exhibit 1** and incorporated by reference
6 is a copy of the written notice provided by Plaintiff Katrina Trester to the LWDA. Therefore,
7 Plaintiff Katrina Trester exhausted the statutory time period to bring this action.

8 **18.** On September 3, 2021, Plaintiff Abigail Perez-Tellez provided written
9 notice to the LWDA and Defendants of the specific provisions of the Labor Code she contends
10 were violated, and the theories supporting her contentions. She believes that on or about
11 November 8, 2021, the sixty-five (65) days' notice period expired, and the LWDA did not take
12 any action to investigate or prosecute this matter. Attached hereto as **Exhibit 2** and incorporated
13 by reference is a copy of the written notice provided by Plaintiff Abigail Perez-Tellez to the
14 LWDA. Therefore, she exhausted the statutory time period to bring this action.

15 **19.** Plaintiffs and the other hourly-paid or non-exempt employees are
16 "aggrieved employees" as defined by California Labor Code § 2699(c) in that they are all current
17 or former employees of Defendants who worked for Defendants at any time during the period
18 from August 30, 2020 to the present, and one or more of the alleged violations was committed
19 against them.

20 **Failure to Pay Minimum and Overtime Wages**

21 **20.** At all times relevant herein, Defendants were required to compensate their
22 non-exempt employees minimum wages for all hours worked and overtime wages for all hours
23 worked in excess of eight (8) hours in a day or forty (40) hours in a workweek, pursuant to the
24 mandate of Labor Code §§ 510, 1194, 1197, and 1198.

25 **21.** As a policy and practice, Defendants failed to compensate Plaintiffs and
26 other aggrieved current and former employees for all hours worked, resulting in a failure to pay
27 all minimum wages and overtime wages, where applicable.

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22. At all times relevant herein, Defendants were required to provide Plaintiff with paid sick leave of not less than one (1) hour per every thirty (30) hours worked, as required by California Labor Code § 246.

23. At all times relevant herein, Defendants were required to pay paid sick leave to an exempt employee's regular rate of pay for the workweek in which the employee was absent, or time or at a rate calculated by dividing the employee's total wages, not including premium pay, by the employee's total hours worked in the full pay periods of the prior year of employment, pursuant to California Labor Code § 246(l).

24. As a policy and practice, Defendants failed to provide Plaintiffs and other present and former employees with compliant paid sick leave of one (1) hour worked per day (30) hours worked, by, for example, failing to pay paid sick leave at the proper rate.

Failure to Provide Meal Periods and Rest Breaks

25. In accordance with the mandates of Labor Code §§ 226.7 and 512, [redacted] were required to authorize and permit their non-exempt employees to take a 10-minute break for every four (4) hours worked or major fraction thereof, and were further required to provide their non-exempt employees with a 30-minute meal period for every five (5) hours worked or major fraction thereof.

26. As a policy and practice, Defendants failed to provide Plaintiffs and other present and former employees with legally-mandated meal periods and rest breaks and proper compensation for this failure.

Failure to Timely Pay Wages During Employment

27. At all times relevant herein, Defendants were required to pay their employees within a specified time period pursuant to the mandate of Labor Code § 204.

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28. As a policy and practice, Defendants failed to pay Plaintiffs and other aggrieved current and former employees all wages due and owing them within the required time period.

Failure to Timely Pay Wages Upon Termination

29. At all times relevant herein, Defendants were required to pay their employees all wages owed in a timely fashion at the end of employment pursuant to California Labor Code §§ 201 to 204.

30. As a result of Defendants' Labor Code violations alleged above, Defendants failed to pay Plaintiffs and the other aggrieved former employees their final wages pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties pursuant to Labor Code § 203.

Failure to Provide Complete and Accurate Wage Statements

31. At all times relevant herein, Defendants were required to keep *accurate* records regarding their California employees pursuant to the mandate of Labor Code §§ 226 and 1174.

32. As a result of Defendants' various Labor Code violations, Defendants failed to keep accurate records regarding Plaintiffs and other aggrieved current and former employees. For example, Defendants failed in their affirmative obligation to keep accurate records regarding Plaintiffs and other aggrieved current and former employees' gross wages earned, total hours worked, all deductions, net wages earned, and all applicable hourly rates and the number of hours worked at each hourly rate.

Failure to Reimburse Business Expenses

33. At all times relevant herein, Defendants were required to reimburse its employees for any and all necessary expenditures or losses incurred by the employees in direct consequences of the discharge or his or her duties pursuant to the mandate of Labor Code §§ 2800 and 2802.

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1 **34.** As a policy and practice, Defendants failed to pay Plaintiffs and other
2 aggrieved current and former employees all business expenses incurred and owing them within
3 the required time period.

4 **Penalties**

5 **35.** Pursuant to California Labor Code § 2699, Plaintiffs, individually, and on
6 behalf of other current and former aggrieved employees, request and are entitled to recover from
7 Defendants, and each of them, civil penalties, interest, attorneys' fees and costs pursuant,
8 including but not limited to:

9 **36.** Penalties under California Labor Code § 2699 in the amount of a hundred
10 dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two
11 hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;

12 **37.** Penalties under California Code of Regulations Title 8 § 11040 in the
13 amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation,
14 and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent
15 violation;

16 **38.** Penalties under California Labor Code § 210 in addition to, and entirely
17 independent and apart from, any other penalty provided in the California Labor Code in the
18 amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial
19 violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each
20 subsequent violation;

21 **39.** Penalties under Labor Code § 1197.1 in the amount of a hundred dollars
22 (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred fifty
23 dollars (\$250) for each aggrieved employee per pay period for each subsequent violation;

24 **40.** Any and all additional penalties as provided by the Labor Code and/or
25 other statutes; and

26 **41.** Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and 2699,
27 and any other applicable statute.

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1. Upon the Cause of Action, for civil penalties pursuant to statute as set forth in Labor Code § 2698 *et seq.*, for Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802.
2. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor Code §§ 210, 218.5, 1194, and 2699, and any other applicable statute; and
3. For such other and further relief the court may deem just and proper.

JUSTICE LAW CORPORATION

DHcn

Douglas Han
Shunt Tatavos-Gharajeh
Arsiné Grigoryan
Attorneys for Plaintiffs

EXHIBIT 1

August 30, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: DELICATO VINEYARDS, LLC D/B/A DELICATO FAMILY VINEYARDS

Dear Representative:

We have been retained to represent Katrina Trester against Delicato Vineyards, LLC d/b/a Delicato Family Vineyards (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "DELICATO").

Ms. Trester is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Trester may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Delicato Vineyards, LLC d/b/a Delicato Family Vineyards is a Delaware limited liability company located at 12001 South Highway 99, Manteca, California 95336.

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¹ Ms. Trester does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Trester will amend this notice when the true names and capacities are known. Ms. Trester is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Trester and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

DELICATO employed Ms. Trester as an hourly-paid non-exempt General Line Technician within one year of the date of this letter (until in or about June or July of 2021²) in the State of California. As a General Line Technician, Ms. Trester's job duties included cleaning and operating machinery, and complying with the company's safety procedures and standards. DELICATO scheduled Ms. Trester to work 12-hour shifts. DELICATO directly controlled the wages, hours and working conditions of Ms. Trester and other aggrieved employees' employment, including direction, hiring, retention, scheduling, supervision, termination and timekeeping. For example, Ms. Trester and other aggrieved employees were required to: (a) perform their job duties under close supervision of a company supervisor; (b) diligently follow the company's safety, GMP, and ISO procedures and policies to safeguard personal and team members' safety, wine quality and company property; (c) perform duties in other areas of the production line as requested by the company's local leadership or supervisor; (d) adhere to the company's quality control specifications; (e) follow Delicato Operation Excellence (DOE) culture; (f) act in a manner reflective of the company's culture of High Moral Standards, Innovation and Continuous Evolution, Trust in Team, Continuous Improvement, and Sustainable Relationships; and (g) follow all the company's policies and procedures.

The "aggrieved employees" that Ms. Trester may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies or labor contractors) of DELICATO within the State of California. DELICATO assigned the aggrieved employees to work in each of the company's departments, including Cellar, Marketing, Sales, Supply Chain & Logistics, Warehouse, Winemaking & Enology, and Winery Operations, at the company's California facilities in Geyserville, King City, Manteca, Napa, Paicines and Stockton. DELICATO hired aggrieved employees in job positions such as Bottler, Bulk Scale House Technician, Cellar Technician, Customer Service Representative, Forklift Operator, General Line Technician, Harvest Enologist/Winemaking/Viticulture Intern, Laborer, Lead Operator, Line Lead Technician, Material Handler, Quality Control, Refrigeration Maintenance Technician, Warehouse Worker and Packer. DELICATO scheduled the aggrieved employees to work 8-to-12-hour shifts, 5-to-6 days a week. The aggrieved employees were generally subject to the policies and procedures giving rise to the Labor Code violations describe below, irrespective of department, location or position.

DELICATO failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Ms. Trester's PAGA cause of action is tolled.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Trester has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at DELICATO, regardless of their classification, job title, locations, or whether they were hired directly or through a staffing agency or labor contractor.

DELICATO has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Trester and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. DELICATO failed to compensate Ms. Trester and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, donning and doffing uniforms, waiting in line to clock-in and during meal breaks. For example, Ms. Trester spent 2-3 minutes each workday donning and doffing her work uniforms off-the-clock. DELICATO also failed to include non-discretionary bonuses and incentives in aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Ms. Trester and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, DELICATO failed to pay Ms. Trester and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, DELICATO routinely required Ms. Trester and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with DELICATO policies and expectations. DELICATO also failed to adequately staff its facilities to provide coverage to Ms. Trester and other aggrieved employees so they may be relieved of all work duties and take their meal and rest breaks. Also, DELICATO's designated break area was not located in the vicinity of the work area, forcing Ms. Trester and other aggrieved employees to waste a significant portion of their meal and rest breaks travelling between the two areas. Moreover, because DELICATO failed to maintain an adequate number of time clocks, Ms. Trester and other aggrieved employees were forced to cut short their meal breaks so they could wait in line, clock back in from their breaks, return to their post and be ready to work immediately after finishing their breaks. Lastly, DELICATO failed to authorize and permit Ms. Trester and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, DELICATO failed to compensate Ms. Trester and other aggrieved employees all the premium wages they were owed.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, DELICATO failed to pay Ms. Trester and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 203, including for all hours worked, uncompensated off-the-clock work, uncompensated overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, and therefore is liable under California Labor Code section 203.

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California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, DELICATO failed to pay Ms. Trester and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including for all hours worked, uncompensated off-the-clock work, uncompensated overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, DELICATO did not provide Ms. Trester and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from DELICATO were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Trester and other aggrieved employees, (2) total hours worked by Ms. Trester and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Trester and other aggrieved employees (4) all deductions for Ms. Trester and other aggrieved employees, (5) net wages earned by Ms. Trester and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Trester and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Trester and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Trester and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, DELICATO failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Trester and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, DELICATO did not provide Ms. Trester and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of failing to pay them for all hours worked and off-the-clock work, including pre- and post-shift, donning and doffing uniforms, waiting in line to clock-in and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Ms. Trester and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by DELICATO, including for purchasing equipment (like gloves and work boots) they were required to wear while working, using their personal cellular to communicate with management, and using their personal vehicles to travel to different facilities.

We believe that Ms. Trester and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

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LWDA
August 30, 2021
Page 7 of 7

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Trester will seek these penalties and wages on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of DELICATO within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", with a long horizontal flourish extending to the right.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Delicato Vineyards, LLC d/b/a Delicato Family Vineyards
c/o CSC- Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833

Agent for Service of Process for Delicato Vineyards, LLC d/b/a Delicato Family Vineyards

EXHIBIT 2

September 3, 2021

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: DELICATO VINEYARDS, LLC D/B/A DELICATO FAMILY VINEYARDS

Dear Representative:

We have been retained to represent Abigail Perez-Tellez against Delicato Vineyards, LLC d/b/a Delicato Family Vineyards (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "DELICATO").

Ms. Perez-Tellez is pursuing her California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Ms. Perez-Tellez may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Delicato Vineyards, LLC d/b/a Delicato Family Vineyards is a Delaware limited liability company located at 12001 South Highway 99, Manteca, California 95336.

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¹ Ms. Perez-Tellez does not know the true names or capacities, whether individual, partner or corporate, of DOES 1 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Ms. Perez-Tellez will amend this notice when the true names and capacities are known. Ms. Perez-Tellez is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Ms. Perez-Tellez and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

DELICATO employed Ms. Perez-Tellez as an hourly-paid non-exempt General Line Technician within one year of the date of this letter (until in or about May of 2021²) in the State of California. As a General Line Technician, Ms. Perez-Tellez' job duties included placing materials into bagging products, ensuring bottles are sealed and placed into cases properly, ensuring labels are correct, and placing material into machines. DELICATO scheduled Ms. Perez-Tellez to work 8 and 12-hour shifts. DELICATO directly controlled the wages, hours and working conditions of Ms. Perez-Tellez and other aggrieved employees' employment, including direction, hiring, retention, scheduling, supervision, termination and timekeeping. For example, Ms. Perez-Tellez and other aggrieved employees were required to: (a) perform their job duties under close supervision of a company supervisor; (b) diligently follow the company's safety, GMP, and ISO procedures and policies to safeguard personal and team members' safety, wine quality and company property; (c) perform duties in other areas of the production line as requested by the company's local leadership or supervisor; (d) adhere to the company's quality control specifications; (e) follow Delicato Operation Excellence (DOE) culture; (f) act in a manner reflective of the company's culture of High Moral Standards, Innovation and Continuous Evolution, Trust in Team, Continuous Improvement, and Sustainable Relationships; and (g) follow all the company's policies and procedures.

The "aggrieved employees" that Ms. Perez-Tellez may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies or labor contractors) of DELICATO within the State of California. DELICATO assigned the aggrieved employees to work in each of the company's departments, including Cellar, Marketing, Sales, Supply Chain & Logistics, Warehouse, Winemaking & Enology, and Winery Operations, at the company's California facilities in Geyserville, King City, Manteca, Napa, Paicines and Stockton. DELICATO hired aggrieved employees in job positions such as Bottler, Bulk Scale House Technician, Cellar Technician, Customer Service Representative, Forklift Operator, General Line Technician, Harvest Enologist/Winemaking/Viticulture Intern, Laborer, Lead Operator, Line Lead Technician, Material Handler, Quality Control, Refrigeration Maintenance Technician, Warehouse Worker and Packer. DELICATO scheduled the aggrieved employees to work 8-to-12-hour shifts, 5-to-6 days a week. The aggrieved employees were generally subject to the policies and procedures giving rise to the Labor Code violations describe below, irrespective of department, location or position.

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² Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Therefore, the one (1) year statute of limitations for Ms. Perez-Tellez's PAGA cause of action is tolled.

DELICATO failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Ms. Perez-Tellez has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at DELICATO, regardless of their classification, job title, locations, or whether they were hired directly or through a staffing agency or labor contractor.

DELICATO has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Ms. Perez-Tellez and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. DELICATO failed to compensate Ms. Perez-Tellez and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift, donning and doffing uniforms, waiting in line to clock-in and during meal breaks. For example, Ms. Perez-Tellez spent up to 15 minutes each workday donning and doffing her work uniforms off-the-clock and walking to the meeting location. DELICATO also failed to include non-discretionary bonuses and incentives in aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Ms. Perez-Tellez and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code section 246 requires that employers provide employees with paid sick leave of not less than one hour per every 30 hours worked. California Labor Code section 246(l) also requires that paid sick leave be paid at a non-exempt employee's regular rate of pay for the workweek in which the employee uses paid sick time or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment. During the relevant time period, DELICATO failed to pay Ms. Perez-Tellez and other aggrieved employees with paid sick leave that complied with California Labor Code section 246, by, for example, failing to pay paid sick leave at non-exempt employee's regular rate of pay or at a rate calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, DELICATO routinely required Ms. Perez-Tellez and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with DELICATO policies and expectations. DELICATO also failed to adequately staff its facilities to provide coverage to Ms. Perez-Tellez and other aggrieved employees so they may be relieved of all work duties and take their meal and rest breaks. Also, DELICATO's designated break area was not located in the vicinity of the work area, forcing Ms. Perez-Tellez and other aggrieved employees to waste a significant portion of their meal and rest breaks travelling between the two areas. Moreover, because DELICATO failed to maintain an adequate number of time clocks, Ms. Perez-Tellez and other aggrieved employees were forced to cut short their meal breaks so they could wait in line, clock back in from their breaks, return to their post and be ready to work immediately after finishing their breaks. Lastly, DELICATO failed to authorize and permit Ms. Perez-Tellez and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, DELICATO failed to compensate Ms. Perez-Tellez and other aggrieved employees all the premium wages they were owed, including at their regular rate of pay.

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California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, DELICATO failed to pay Ms. Perez-Tellez and other aggrieved employees all wages due to them within any time period specified by California Labor Code sections 201 and 203, including for all hours worked, uncompensated off-the-clock work, uncompensated overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks, and therefore is liable under California Labor Code section 203.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, DELICATO failed to pay Ms. Perez-Tellez and other aggrieved employees all wages due to them within any time period specified by California Labor Code section 204, including for all hours worked, uncompensated off-the-clock work, uncompensated overtime premiums and premium wages for failing to provide legally mandated meal and rest breaks.

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California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, DELICATO did not provide Ms. Perez-Tellez and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from DELICATO were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Ms. Perez-Tellez and other aggrieved employees, (2) total hours worked by Ms. Perez-Tellez and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Ms. Perez-Tellez and other aggrieved employees (4) all deductions for Ms. Perez-Tellez and other aggrieved employees, (5) net wages earned by Ms. Perez-Tellez and other aggrieved employees, (6) the inclusive dates of the period for which Ms. Perez-Tellez and other aggrieved employees are paid, (7) the name of the aggrieved employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by Ms. Perez-Tellez and other aggrieved employees.

California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Ms. Perez-Tellez and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, DELICATO failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Ms. Perez-Tellez and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, DELICATO did not provide Ms. Perez-Tellez and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of failing to pay them for all hours worked and off-the-clock work, including pre- and post-shift, donning and doffing uniforms, waiting in line to clock-in and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by DELICATO, including for purchasing equipment (like gloves and work boots) they were required to wear while working, using their personal cellular to communicate with management, and using their personal vehicles to travel to different facilities.

We believe that Ms. Perez-Tellez and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 210, 218.5, 221, 226(a), 226.3, 226.7, 246, 510, 512(a), 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Ms. Perez-Tellez will seek these penalties and wages on her own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of DELICATO within one year of the date of this letter, as allowed by law.

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LWDA
September 3, 2021
Page 8 of 8

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read 'D. Han', with a stylized flourish at the end.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

Delicato Vineyards, LLC d/b/a Delicato Family Vineyards
c/o CSC- Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N
Sacramento, California 95833

Agent for Service of Process for Delicato Vineyards, LLC d/b/a Delicato Family Vineyards

**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is jtorrez@justicelawcorp.com

On February 4, 2022, I served the foregoing document described as

**COMPLAINT FOR CIVIL PENALTIES FOR VIOLATION OF LABOR CODE
§ 2698 *et seq.* (PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

for the following case: LWDA/Court Case No.:	Tellez v. Delicato Vineyards, LLC LWDA Case No.: CM- 843504 - 21 Court Case No.: CU-22-00016 San Benito County Superior Court
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on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

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I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on February 4, 2022, at Pasadena, California.



Jessica Tarren

Jessica Torrez